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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,988	03/26/2004	Thomas J. Clover	2070/5	9605

7590 06/12/2006

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 06/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/809,988	Applicant(s) CLOVER, THOMAS J.	
	Examiner Jennifer E. Novosad	Art Unit 3634	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

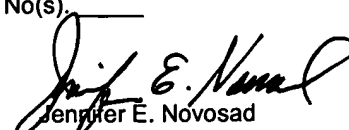
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1,3-11 and 13-22.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s) _____.
 13. ☐ Other: _____.


 Jennifer E. Novosad
 Primary Examiner
 Art Unit: 3634

Continuation of 5. Applicant's reply has overcome the following rejection(s):

(a) The drawing objections regarding the "consistng of" and the padding material; and

(b) The Section 112, 2nd paragraph rejection concerning the recitation "unitary member". However, it is noted that this recitation is broad and the elements can be construed as a "unitary member" both separately and once assembled.

Continuation of 11. does NOT place the application in condition for allowance because:

(a) With respect to the drawing objections and arguments (see pages 9 and 10), it is noted that that applicant has neither corrected or argued the drawing objection stating that Figure 1 contains modifications in the same view.

(b) Regarding applicant's arguments (see the first full paragraph on page 11) concernng the Section 112, 1st paragraph rejection and that "Applicant notes that none of claims 4-7, 9, 10, 14-17, and 19-22" add elements or steps. Rather, each of claims 4-7, 9, 10, 14-17, and 19-22 simply modify the 'consisting of elements" are not persuasive. In particular, the elemnets such as the flanged portion, the bracket, padding material, ar enot modifications but are infact additions.

(c) With respect to applicant's arguments (see the second full paragraph on page 14) regarding the "unitary member", it is noted that as advanced above, the elemnets are considered to be a uniary member, once assembled. Thus, contrary to applicant's assertion, the would not be destroyed.

(d) Regarding applicant's arguments (see the last paragraph on page 11) that "the Examiner is alleging that one of ordinary skill in the art would expect that removing a full half of the support would result in a stable and dependable support" is not well-taken. Since one of the supports (as 16) is and A-frame, this shape would be considered to any one of ordinary skill to be stable. Further, the arguments in the second paragraph on page 12, have been considered but are considered to be commensuarte with the scope of the claim since the instant claim does not preclude an "A-frame" shape.

(e) With respect to the "telescoping support portion" (see arguments on page 13), the definition (see Webster's Dictionary, 10th ediiton - hard cover paper copy) stated by the examiner in the final Office action is considered to be sufficient and thus in view of this, the reference is considered to show such a feature.

(f) With respect to applicant's arguments (see pages 14-16) regarding the "official notice", it is noted that, as discussed in the final Office action, the claims were read in view of the Section 112, 1st and 2nd paragraph rejections. Further, although the Crowell reference utilizes elemnets 18 and 19, the reference would not be destroyed if these elements were not used and one support is considered to be stable to support objects in such a way as called for in the claims. Thus, the examiner contends that taking official notice in this instance is proper.

(g) Finally, applicant's arguments (see second paragraph on page 16) regarding taking official notice and the "unitary member" recitation, it is noted that the examiner did not take official notice for this recitation.